

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 773*
PROPOSED COMMITTEE SUBSTITUTE S773-PCS45215-MN-11

Short Title: Implement GSC Recommendations.

(Public)

Sponsors:

Referred to:

May 19, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GENERAL STATUTES
3 COMMISSION TO MODIFY THE SLAYER STATUTE DUE TO THE NEED TO
4 ACCOUNT FOR PROPERTY HELD IN A JOINT TENANCY IN UNEQUAL SHARES,
5 TO CLARIFY THE PROVISIONS FOR FILING CERTIFIED COPIES OF PROBATED
6 WILLS IN OTHER COUNTIES WHERE A DECEDENT HAS REAL PROPERTY, AND
7 TO DELETE THE STATUTORY FORMS FOR JUDGMENT DEBTORS CLAIMING
8 EXEMPTIONS UNDER G.S. 1C-1601 BECAUSE THE ADMINISTRATIVE OFFICE OF
9 THE COURTS ALREADY HAS WIDELY USED FORMS FOR THAT PURPOSE, AS
10 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

11 The General Assembly of North Carolina enacts:

12
13 **PART I. MODIFICATION OF SLAYER STATUTE**

14 **SECTION 1.1.** G.S. 31A-6 reads as rewritten:

15 **"§ 31A-6. Survivorship property.**

16 (a) Where the slayer and the decedent hold property with right of survivorship as joint
17 tenants, joint owners, joint obligees or ~~otherwise, otherwise, the following apply:~~

18 (1) ~~the~~ The decedent's share thereof shall pass ~~passes~~ immediately upon the death
19 ~~of the decedent to his estate, decedent's death to the decedent's estate.~~

20 (2) ~~and the~~ The slayer's share shall be held by the slayer during his lifetime for
21 life and at his ~~the slayer's death shall pass to the estate of the decedent.~~
22 ~~During his lifetime, the slayer shall have the right to the income from his~~
23 ~~share of the property subject to the rights of creditors of the slayer.~~ decedent's
24 estate.

25 (b) Where three or more persons, including the slayer and the decedent, hold property
26 with right of survivorship as joint tenants, joint owners, joint obligees or ~~otherwise, the portion~~
27 ~~of the decedent's share which would have accrued to the slayer as a result of the death of the~~
28 ~~decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one~~
29 ~~half of the property then held by the slayer shall pass immediately to the estate of the decedent,~~
30 ~~and upon the death of the slayer the remaining interest of the slayer shall pass to the estate of~~
31 ~~the decedent. During his lifetime the slayer shall have the right to the income from his share of~~
32 ~~the property subject to the rights of creditors of the slayer.~~ otherwise, the following apply:

33 (1) The decedent's share is converted effective upon the decedent's death to that
34 of a tenant in common and passes to the decedent's estate.

35 (2) The remaining persons, including the slayer, continue to hold their shares
36 with right of survivorship.



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1 (3) If the slayer becomes the final survivor, upon the slayer's death, the slayer's
2 share, which includes the other shares that passed to the slayer as the final
3 survivor, shall pass to the decedent's estate.

4 (c) During the slayer's lifetime, the slayer shall have the right to the income from the
5 slayer's share, subject to the rights of the slayer's creditors.

6 (d) Nothing in this section prohibits a partitioning of the property pursuant to Chapter
7 46 of the General Statutes or severing the joint tenancy in any manner provided by law. Any
8 share taken by the slayer by reason of partition or severance shall be subject to subdivision (3)
9 of subsection (b) of this section."

10 **SECTION 1.2.** This Part becomes effective October 1, 2014, and applies to
11 property subject to Article 3 of Chapter 31A of the General Statutes as to decedents dying on or
12 after that date.

13 14 **PART II. CLARIFY THE PROVISIONS FOR FILING CERTIFIED COPIES OF** 15 **PROBATED WILLS IN OTHER COUNTIES WHERE A DECEDENT HAS REAL** 16 **PROPERTY**

17 **SECTION 2.1.** G.S. 28A-2A-13 reads as rewritten:

18 "**§ 28A-2A-13. Wills filed in clerk's ~~office~~; certified copies filed for real property in**
19 **other counties.**

20 (a) All original probated wills shall remain in the ~~clerk's office~~, office of the clerk of
21 superior court, among the public records of the court where the ~~same shall be proved, and to~~
22 ~~such wills any person may have access, as to the other records.~~ wills were probated.

23 (b) If ~~said a probated will contains a devise of real estate,~~ devises real property outside
24 ~~said the county~~ where ~~said will is~~ the will was probated, ~~then a copy of the said will, together~~
25 ~~with the probate of the same,~~ a copy of the will and a copy of the certificate of probate of the
26 will, certified under the hand and seal of the clerk of the superior court of ~~said the county where~~
27 ~~the will was probated~~, may be ~~recorded in the book of wills and~~ filed in the office of the clerk
28 of the superior court of any other county in ~~the this State~~ in which ~~said land is situated~~ the real
29 property is situated. The filing of the probated will in the county where the real property is
30 situated shall have with the same effect as to passing the title to said real estate for purposes of
31 G.S. 31-39(c) as to the priorities of claims against the real property as if said the will had
32 originally been probated and filed in said county and the clerk of the superior court of said
33 ~~last mentioned county~~ in that county and as if the clerk of superior court of that county had had
34 jurisdiction to probate the same will."

35 **SECTION 2.2.** G.S. 31-39(c) reads as rewritten:

36 "(c) A will duly probated in one county of this State is not effective to pass title to an
37 interest in real property located in any other county of this State as against lien creditors or
38 purchasers for valuable consideration from the intestate heirs at law of a decedent unless a
39 certified copy of the will ~~is~~ and a certified copy of the certificate of probate of the will are filed
40 in the office of the clerk of superior court in the county where the real property lies within the
41 time limitation set forth in subsection (b) of this section."

42 **SECTION 2.3.** This Part becomes effective October 1, 2014, and applies to estates
43 of decedents dying before, on, or after that date.

44 45 **PART III. DELETE STATUTORY FORMS IN G.S. 1C-1603**

46 **SECTION 3.1.** G.S. 1C-1603 reads as rewritten:

47 "**§ 1C-1603. Procedure for setting aside exempt property.**

48 (a) Motion or Petition; Notice. –

49 (1) ~~A judgment debtor may have his exempt property designated by motion~~
50 ~~after~~ After judgment has been entered against him a judgment debtor, that
51 person's exempt property may be designated by motion.

- (2) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 10.
- (3) The clerk or district court judge may determine that particular property is not exempt even though there has been no proceeding to designate the exemption.
- (4) After judgment, except as provided in ~~G.S. 1C-1603(a)(3)~~ subdivision (3) of this subsection or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising the debtor of the debtor's rights. The judgment creditor ~~shall~~ must cause the notice, which ~~shall~~ must be accompanied by the form for the statement by the debtor under ~~subsection (e)~~ subsection (c1) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided ~~above, under G.S. 1A-1, Rule 4(j)(1),~~ the judgment creditor may serve the judgment debtor by mailing a copy of the notice to the judgment debtor at the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service.
- (5) The Administrative Office of the Courts must provide a form for the notice from the court required by subdivision (4) of this subsection. The notice shall be substantially in the following form: must describe the types of property exempt from execution under State and federal law. The notice must also inform the debtor that:
 - a. The judgment debtor has the right to retain an interest in certain property free from collection efforts by the judgment creditor.
 - b. To preserve that right, the judgment debtor is required to respond to the notice by filing a motion or petition to claim exempt property, including a schedule of assets that are claimed as exempt, no later than 20 days after the debtor receives the notice, and that the judgment debtor must also mail or take a copy to the judgment creditor at the address provided in the notice.
 - c. The judgment debtor has the option to request a hearing to claim exemptions rather than filing a schedule of assets.
 - d. The judgment debtor may have exemptions under State and federal law that are in addition to those listed on the form for the debtor's statement that is included with the notice, such as Social Security benefits, unemployment benefits, workers' compensation benefits, and earnings for the debtor's personal services rendered within the last 60 days.
 - e. There is a procedure for challenging an attachment or levy on the judgment debtor's property.
 - f. The judgment debtor may wish to consider hiring an attorney.
 - g. Failure to respond within the required time results in the loss of statutory rights.

NORTH CAROLINA

_____ COUNTY

IN THE GENERAL COURT
OF JUSTICE DISTRICT
COURT DIVISION
CvD

_____) _____ NOTICE OF

1	Judgment Creditor)	PETITION (OR
2)	MOTION) TO SET
3	vs.)	OFF DEBTOR'S
4	_____)	EXEMPT PROPERTY

GREETINGS:

~~You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.~~

~~It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.~~

~~NOTICE TO JUDGMENT DEBTOR:~~

~~THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.~~

~~These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.~~

(b) Contents of Motion or Petition. – The motion or petition must:

- (1) Name the judgment debtor;
- (2) Name the judgment creditors of the debtor insofar as they are known to the movant;
- (3) If it is a motion to modify a previously allocated exemption, describe the change of condition (if the movant received notice of the exemption hearing) and the modification desired.

(c) Statement by the Debtor. – When proceedings are instituted, the judgment debtor shall~~must~~ file with the court a schedule of:

- (1) The debtor's assets, including their location;
- (2) ~~The debtor's debts and the names and addresses of the debtor's creditors;~~
- (3) The property that the debtor desires designated as exempt.

~~The form for the statement shall be substantially as follows:~~

37	NORTH CAROLINA	IN THE GENERAL COURT
38	_____ COUNTY	OF JUSTICE DISTRICT
39		COURT DIVISION
40		CvD

42	Judgment Creditor)	SCHEDULE OF DEBTOR'S
43)	PROPERTY
44	vs.)	AND REQUEST TO
45)	SET ASIDE EXEMPT
46	Judgment Debtor)	PROPERTY

~~NOTICE TO JUDGMENT DEBTOR:~~

~~THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.~~

1 These exemptions may include social security benefits, unemployment benefits, workers'
2 compensation benefits, and earnings for your personal services rendered within the last 60
3 days. There is available to you a prompt procedure for challenging an attachment or levy on
4 your property.

5 I, _____, being duly sworn do depose and say:

6 (fill in your name)

7 1. That I am a citizen and resident of _____ County,
8 North Carolina;

9 2. That I was born on _____;
10 (date of birth)

11 3. That I am (married to _____)
12 (spouse's name)

13 _____;
14 (not married)

15 4. That the following persons live in my household and are in substantial need of my
16 support:

17 NAME	RELATIONSHIP TO DEBTOR	AGE
18 _____	_____	_____
19 _____	_____	_____
20 _____	_____	_____
21 _____	_____	_____

22
23 (Use additional space, as necessary)

24 5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a
25 (house) (trailer) (apartment) (choose one; mark out the other choices)
26 located at _____
27 which is my residence. (address, city, zip code)

28 6. That I (do) (do not) own any other real property. If other real property is owned, list that
29 property on the following lines; if no other real property is owned, mark "not applicable" on the
30 first line.

31 _____
32 _____
33 _____
34 _____

35 7. That the following persons are, so far as I am able to tell, all of the persons or companies
36 to whom I owe money:

37 _____
38 _____
39 _____
40 _____

41 8. That I wish to claim my interest in the following real or personal property, or in a
42 cooperative that owns property, that I use as a residence or my dependent uses as a residence. I
43 also wish to claim my interest in the following burial plots for myself or my dependents. I
44 understand that my total interest claimed in the residence and burial plots may not exceed
45 \$35,000, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a
46 total exemption in the residence and burial plots not to exceed \$60,000 so long as the property
47 was previously owned by me as a tenant by the entireties or as a joint tenant with rights of
48 survivorship, and the former co-owner of the property is deceased.

49 I understand that I am not entitled to this exemption if I take the homestead exemption
50 provided by the Constitution of North Carolina in other property. I understand that if I wish to

1 ~~claim more than one parcel exempt I must attach additional pages setting forth the following~~
2 ~~information for each parcel claimed exempt.~~

3 ~~Property Location:~~

4 ~~County _____ Township _____~~

5 ~~Street Address _____~~

6 ~~Legal Description:~~

7 ~~Number by which county tax assessor identifies property _____~~

8 ~~Description (Attach a copy of your deed or other instrument of conveyance that describes~~
9 ~~the property and indicate here: _____ or describe the property in as much detail as possible.~~

10 ~~Attach additional sheets if necessary.)~~

11 _____

12 _____

13 _____

14 ~~Record Owner(s) _____~~

15 _____

16 _____

17 ~~Estimated Value: _____~~

18 ~~Lienholders:~~

19 ~~(1) Name _____ Current Balance _____~~

20 ~~Address _____~~

21 ~~(2) Name _____ Current Balance _____~~

22 ~~Address _____~~

23 ~~(3) Name _____ Current Balance _____~~

24 ~~Address _____~~

25 ~~(4) If others, attach additional pages.~~

26 ~~If you are unmarried and 65 years of age or older, specify which, if any, property listed~~
27 ~~above was previously owned by you as a tenant by the entireties or as a joint tenant with rights~~
28 ~~of survivorship and as to which the former co-owner of the property is deceased:~~

29 ~~9. That I wish to claim the following life insurance policies whose sole beneficiaries are~~
30 ~~(my wife) (my children) (my wife and children) as exempt:~~

31 ~~Name of Insurer Policy Number Face Value Beneficiary(ies)~~

32 _____

33 _____

34 _____

35 ~~10. That I wish to claim the following items of health care aid necessary for (myself) (my~~
36 ~~dependents) to work or sustain health:~~

37 ~~Item Purpose Person using item~~

38 _____

39 _____

40 _____

41 ~~11. That I wish to claim the following implements, professional books, or tools (not to~~
42 ~~exceed \$2,000), of my trade or the trade of my dependent. I understand that such property~~
43 ~~purchased within 90 days of this proceeding may not be exempt:~~

44 ~~Item Estimated Value~~

45 _____

46 _____

47 _____

48 ~~12. That I wish to claim the following personal property consisting of household~~
49 ~~furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical~~
50 ~~instruments as exempt from the claims of my creditors. I affirm, that these items of personal~~

1 property are held primarily for my personal, family or household use or for such use by my
2 dependents.

3 I understand that I am entitled to personal property worth the sum of \$5,000. I understand
4 that I am also entitled to \$1,000 for each person dependent on me for support, but not to exceed
5 \$4,000 for dependents. I further understand that I am entitled to this amount after deduction
6 from the value of the property the amount of any valid lien or purchase money security interest
7 and that property purchased within 90 days of this proceeding may not be exempt.

8 Item (or class) 9 of Property	Amount of Lien or Security 10 Interest	Location	Estimated Value of Debtor's Interest
11 _____	_____	_____	_____
12 _____	_____	_____	_____
13 _____	_____	_____	_____
14 _____	_____	_____	_____

15 13. That I wish to claim my interest in the following motor vehicle as exempt from the
16 claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth
17 the sum of \$3,500 after deduction of the amount of any valid liens or purchase money security
18 interest. I understand that a motor vehicle purchased within 90 days of this proceeding may not
19 be exempt.

20 Make and 21 Model of 22 Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest
23 _____	_____	_____	_____	_____

24
25 14. That I wish to claim as exempt the following compensation that I received or to which I
26 am entitled for the personal injury of myself or a person upon whom I was dependent for
27 support, including compensation from a private disability policy or an annuity, or compensation
28 that I received for the death of a person upon whom I was dependent for support. I understand
29 that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or
30 health care charges related to the accident or injury that resulted in the payment of the
31 compensation to me. I understand that if I wish to claim more than one amount of
32 compensation exempt, I must attach additional pages setting forth the following information for
33 each amount of compensation claimed exempt.

- 34 (a) amount of compensation-
- 35 (b) method of payment: lump sum or installments-
- 36 (If installments, state amount, frequency and duration of payments)
- 37
- 38 (c) name and relationship to debtor of person(s) injured or killed giving rise to
- 39 compensation-
- 40 (d) location/source of compensation if received in lump or installments, including name
- 41 and account number of any disability policy or annuity-
- 42
- 43 (e) unpaid debts arising out of the injury or death giving rise to compensation
- 44

45 Name and Address	Services Rendered	Amount of Debt
46 _____	_____	_____
47 _____	_____	_____

48 15. That I wish to claim the following property as exempt because I claimed residential real
49 or personal property as exempt that is worth less than \$35,000 or I made no claim for a
50 residential exemption under section (8) above. I understand that I am entitled to an exemption
51 of up to \$5,000 in any property only if I made no claim under section (8) above or a claim that

was less than \$35,000 under section (8) above. I understand that I am entitled to claim any unused amount that I was permitted to make under section (8) above up to a maximum of \$5,000 in any property. (Examples: (a) if you claim \$34,000 under section (8), \$1,000 allowed here; (b) if you claim \$30,000 under section (8), \$5,000 allowed here; (c) if you claim \$35,000 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
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REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____
Street Address _____

Legal Description:

Number by which county tax assessor identifies property

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

Record Owner(s):

Estimated Value:

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue Code, including

individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Table with 3 columns: Type of Retirement Account, Name of Account, Account Number. Includes blank lines for entry.

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed \$25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

Table with 4 columns: College Savings Plan, Account Number, Value, Name(s) of Child(ren) Beneficiaries. Includes blank lines for entry.

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

Table with 3 columns: State/Government Unit, Name of Retirement Plan, Identifying Number. Includes blank lines for entry.

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Table with 3 columns: Type of Support, Person Paying Support, Amount & Location of Funds. Includes blank lines for entry.

20. That the following is a complete listing of all of my assets that I have not claimed as exempt under any of the preceding paragraphs:

Table with 3 columns: Item, Location, Estimated value. Includes blank lines for entry.

This the ____ day of ____, ____

Judgment Debtor

Sworn to and Subscribed before me this ____ day of ____, ____.

Notary Public _____ My Commission Expires: ____

(c1) Form for Debtor's Statement. - The Administrative Office of the Courts must provide a form for a schedule to enable a debtor to claim property as exempt under subsection (c) of this section as well as to list property as exempt under other provisions of State law, the North Carolina Constitution, and federal law.

1 (d) Notice to Persons Affected. – If the judgment debtor moves to designate his
2 exemptions, a copy of the motion and schedule must be served on the judgment creditor as
3 provided in G.S. 1A-1, Rule 5.

4 (e) Procedure for Setting Aside Exempt Property. –

5 (1) When served with the notice ~~provided in G.S. 1C 1603(a)(4), under~~
6 subdivision (4) of subsection (a) of this section, the judgment debtor may
7 either file a motion to designate his exemptions with a schedule of assets or
8 may request, in writing, a hearing before the clerk to claim exemptions.

9 (2) If the judgment debtor does not file a motion to designate exemptions with a
10 schedule of assets within 20 days after notice of ~~his the debtor's rights~~ was
11 served in accordance with ~~G.S. 1C 1603(a)(4) subdivision (4) of subsection~~
12 (a) of this section, or if ~~he the debtor~~ does not request a hearing before the
13 clerk within 20 days after service of the notice of rights and appear at the
14 requested hearing, the judgment debtor has waived the exemptions provided
15 in this Article and in Sections 1 and 2 of Article X of the North Carolina
16 Constitution. Upon request of the judgment creditor, the clerk ~~shall~~must
17 issue a writ of execution or writ of possession.

18 (3) If the judgment debtor moves to designate his exemptions by filing a motion
19 and schedule of assets, the judgment creditor ~~is~~must be served as provided
20 in ~~G.S. 1C 1603(d), subsection (d) of this section~~.

21 (4) If the judgment debtor requests a hearing before the clerk to claim
22 exemptions, the clerk ~~sets~~must set a hearing date and ~~gives~~give notice of
23 the hearing to the judgment debtor and judgment creditor. At the hearing, the
24 judgment debtor may claim ~~his the debtor's~~ exemptions.

25 (5) The judgment creditor has 10 days from the date served with a motion and
26 schedule of assets or from the date of a hearing to claim exemptions to file
27 an objection to the judgment debtor's schedule of exemptions.

28 (6) If the judgment creditor files no objection to the schedule filed by the
29 judgment debtor or claimed at the requested hearing, the clerk ~~shall~~must
30 enter an order designating the property allowed by law and scheduled by the
31 judgment debtor as exempt property. Upon request of the judgment creditor,
32 the clerk ~~shall~~must issue an execution or writ of possession except for
33 exempt property.

34 (7) If the judgment creditor objects to the schedule filed or claimed by the
35 judgment debtor, the clerk must place the motion for hearing by the district
36 court judge, without a jury, at the next civil session.

37 (8) The district court judge must determine the value of the property. The
38 district court judge or the clerk, upon order of the judge, may appoint a
39 qualified person to examine the property and report its value to the judge.
40 Compensation of that person must be advanced by the person requesting the
41 valuation and is a court cost having priority over the claims.

42 (9) The district court judge must enter an order designating exempt property.
43 Supplemental reports and orders may be filed and entered as necessary to
44 implement the order.

45 (10) Where the order designating exemptions indicates excess value in exempt
46 property, the clerk, in an execution, may order the sale of property having
47 excess value and appropriate distribution of the proceeds.

48 (11) The clerk or district court judge may permit a particular item of property
49 having value in excess of the allowable exemption to be retained by the
50 judgment debtor upon ~~his the debtor's~~ making available to judgment
51 creditors money or property not otherwise available to them in an amount

1 equivalent to the excess value. Priorities of judgment creditors are the same
2 in the substituted property as they were in the original property.

3 (12) Appeal from a designation of exempt property by the clerk is to the district
4 court judge. A party has 10 days from the date of entry of an order to appeal.
5 Appeal from a designation of exempt property by a district court judge is to
6 the Court of Appeals. Decisions of the Court of Appeals with regard to
7 questions of valuation of property are final as provided in G.S. 7A-28. Other
8 questions may be appealed as provided in G.S. 7A-30 and 7A-31.

9 (f) Notation of Order on Judgment Docket. – A notation of the order setting aside
10 exempt property must be entered by the clerk of court on the judgment docket opposite the
11 judgment that was the subject of the enforcement proceeding. If real property located in a
12 county other than the county in which the judgment was rendered is designated as exempt and
13 the judgment has already been docketed in that county, the clerk must send a notice of the
14 designation of exempt property to the county where the property is located. The clerk of the
15 county where the land is located ~~shall~~must enter a notation of the designation of exempt
16 property on the judgment docket. If a judgment is docketed in a county where real property is
17 located after that real property has been designated as exempt, the transcript of judgment must
18 indicate that the exemptions have been designated. The clerk in the county receiving the
19 transcript must enter the notation of designation of exempt property as well as docket the
20 judgment.

21 (g) Modification. – The judgment debtor's exemption may be modified by motion in the
22 original exemption proceeding by anyone who did not receive notice of the exemption hearing.
23 Also, the debtor's exemption may be modified upon a change of circumstances, by motion in
24 the original exemption proceeding, made by the debtor or anyone interested. A substantial
25 change in value may constitute changed circumstances. Modification may include the
26 substitution of different property for the exempt property.

27 (h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 14."

28 **SECTION 3.2.** This Part becomes effective October 1, 2014. This Part does not
29 affect any debtor's statements issued before that date.

30 **PART IV. EFFECTIVE DATE**

31 **SECTION 4.1.** Except as otherwise provided, this act is effective when it becomes
32 law.
33